

Utah Division of Solid and Hazardous Waste
Response to Comments
Received on Weber C&D Class VI Landfill
Permit Application and Draft Permit

INTRODUCTION

The period to receive comments on the Weber C&D Class VI Landfill permit application and draft permit began on November 29, 2003 and ended on December 30, 2003. A public hearing was held on December 3, 2003 in Odgen, Utah. Both written comment comments and oral comments were received. Comments in opposition to the construction and operation of this landfill were received and are summarized in this document.

To address the relevant comments received, the applicant was asked to provide additional information. Also, some changes to the Draft Permit were made to specifically address or clarify the comments received during the public comment period.

COMMENTS/ RESPONSES

Comments Received through Mail
(Holland & Hart, Document Ref# 03.04249)

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| Comment | <p>#1: “The Proposed Landfill runs afoul of the “Solid Waste Facility Location Standards” promulgated pursuant to the Utah Solid and Hazardous Waste Act. The siting criteria state in the relevant part:</p> <p style="margin-left: 40px;">No new facility shall be located within (v) ten thousand feet of any airport runway used by turbojet aircraft or within 5,000 feet or any airport runway used by only piston-type aircraft unless the owner or operator demonstrates that the facility design and operation will not increase the likelihood of birds/aircraft collisions.</p> <p style="margin-left: 40px;">Utah Admin. Code R315-302-1(2)(a)(v)</p> |
| Response | <p>#1: As stated in UAC R315-302(1)(iii), the applicable standard for a Class VI Landfill is found in Rule R315-305. Referring to Rule R315-305-4, the location standards for a new Class VI landfill are:</p> <p>R315-305-4. General Requirements.</p> <ul style="list-style-type: none">(1) Location Standards.(a) A new Class IVa Landfill shall meet the location standards of Subsection R315-302-1(2). |

- (b) A new Class IVb or VI Landfill or the expansion of an existing Class IVb or VI Landfill shall be subject to the following location standards:
 - (i) the standards with respect to floodplains as specified in Subsection R315-302-1(2)(c)(ii);
 - (ii) the standards with respect to wetlands as specified in Subsection R315-302-1(2)(d);
 - (iii) the standards with respect to ground water as specified in Subsection R315-301-1(2)(e)(i)(B); and
 - (iv) if the permit application for a new Class IVa, IVb, or VI Landfill requests approval to accept dead animals for disposal, the application shall document that the landfill also meets the requirements of Subsections R315-302-1(2)(a)(i), (ii), (iv), and (v).

These rules state that if a new Class VI landfill application specifically requests to take dead animals, then this landfill would be subject to the location standard restricting the distance to airports. Warren Construction has not applied to take dead animals. This landfill is not subject to the airport location standard of R315-302-1(2)(v).

Section I(D) of the Permit that describes the “Prohibited Wastes” will be modified to specifically exclude dead animals from this landfill.

Comment: #2 The Proposed Landfill violates the criterion applicable to incompatible uses which states in pertinent part:

No new facility shall be located within: (i) one-fourth mile of existing permanent dwellings, residential areas, and other incompatible structures such as schools or churches unless otherwise allowed by local zoning or ordinance.

Utah Admin. Code R315-302-1(2)(a)(iv)

Response: #2 In accordance with R315-305-4 (1) (a) (iv) and because the Weber C&D Class VI Landfill will not accept dead animals for disposal, the location standards of R315-302-1(2)(a)(iv) are not applicable.

Comment: #3 The current zoning on the proposed site does not currently allow a landfill at the site.

Response: #3 Weber County currently does not have a zone for landfills. The owner of the proposed landfill is discussing the zoning of this property for use as a landfill. The granting of the Permit is based on the technical merits of the landfill to be placed at this location, while zoning is a county government issue.

The landfill must receive all local approvals necessary prior to commencement of operation. Section V(F) of the Permit has been modified to include a requirement for local zoning approval prior to construction and acceptance of waste.

Comment: #4 The application fails to adequately demonstrate that the proponent of the Proposed Landfill actually owns the entire site of the Proposed Landfill, as required by law. See Utah Admin. Code R315-310-3(c). Indeed, it appears from the permit application that the application does not currently own the property given that it states that “[p]roof of ownership will be supplied after land closing.” See Permit Application, Part II, at 1.

Moreover, the permit application fails to identify all individuals with direct or indirect ownership interest in the entity which will operate the Proposed Landfill, their “compliance history,” Utah Code Ann. § 19-6-108(10)(c), and that they have received adequate “education and training for the safe and adequate handling of nonhazardous solid or hazardous waste.” See Utah Admin. Code R315-310-9(d). finally, no information has been submitted to demonstrate a proven market for the Proposed Landfill. Id. § R315-310-10(a).

Response: #4 The Executive Secretary has received a real estate sales contract that meets the requirements of the rules. The Permittee has requested that the sales contract be considered “business confidential” at this time.

Section V(F)(3) of the permit has been added to require the Permittee to demonstrate that it owns the property or has a leasehold interest in it prior to any construction of the facility.

R315-310-3(1)(a) requires the permit application to contain the name and address of the property owner and responsible party for the site operation. Warren Construction Services, Inc. will be the owner and operator of this landfill.

As a new Permittee, Warren Construction Services, Inc. has no compliance history.

A Training Plan is addressed in Section 3.4.1 of the Permit Application.

The Executive Secretary believes that a proven market has been sufficiently demonstrated in Section 3.7 of the application.

Comment: #5 The party(s) responsible for preparing the application and all supporting documentation – and their qualifications – is unclear. The

inclusion of stamped/sealed engineering drawings in the Appendices is appropriate. However, there are other technical data and analyses presented that may or may not have been prepared, selected, or their relevance considered, by a qualified professional. It would be appropriate to more fully identify (and credential) the preparer of this application, as the inference that a professional engineer prepared some (but perhaps not all) of the application may leave reviewers with an unwarranted sense of reliability. [WCSI, 2003 – Part I, Item 9 and Appendices F, Q and S]

Response: #5 The Solid Waste Rules do not require that the preparer of an application for a Class VI permit be a professional engineer. The application was submitted by Warren Construction Services, LLC and prepared by Brent Warren.

Part I, Item 9 refers to the Financial Assurance cost estimates for closure of this facility. There is no requirement that these cost estimates be prepared by a professional engineer.

Comment: #6 There are several “factual” references or inferences made in the application that are less than complete or altogether inaccurate, when considered with other information. One example is the reference to “filling a natural depression.” I understand that native material has been removed from the site already, which is consistent with my own observations. Another is the reference that “trees...restrict visibility,” when in fact the site is almost entirely visible from adjoining properties on all sides. [WCSI, 2003 – Section 1.4 and 2.1; Wright, 2003]

Response: #6 The statements made in the application regarding natural depressions and trees are the opinion of the Permit Application author. The commenter has an apparent difference of opinion. These differences of opinion make no material difference in the construction and operation of this facility or to the issuance of the requested permit.

Comment: #7 Many landfill siting criteria – developed and administered by state and local agencies – are intended to assure compatibility with existing land uses, and safety, health and nuisance issues associated with those existing uses. Because of the proximity of the proposed site and landfill use to an airport and runway (~200 feet and ~500 feet, respectively), industrial park (10 feet), railroad crossing (~200 feet) and residential properties (~200 feet), the application’s reliance on “getting a zoning change” renders the application pragmatically premature and incomplete in this respect. While other agency “clearance” documents are provided, no evidence of compatibility with local zoning or local governance for this proposed use was provided. [WCSI, 2003 – Sections 1.3.5, 1.4]

Response: #7 R315-310-3(2)(b) states that “subsequent to the issuance of a solid waste permit by the Executive Secretary, a commercial nonhazardous solid waste disposal facility shall meet the requirements of Subsection 19-6-108(3)(c) and provide documentation to the Executive Secretary that the solid waste disposal facility is approved by the local government, the Legislature, and the governor.” The Executive Secretary understands this statute to mean that the issuance of the permit is separate from the approval by the local government (Weber County) and that the permit may be issued prior to the approval of the local government.

Comment: #8 Although the applicant provides information and a statement regarding compliance with Federal Aviation Administration (FAA) Circular 150/5200-33, the issue of “putrescible” waste deserves further clarification in the application and permit, particularly in light of the extreme close proximity (~500 feet) of the Ogden Municipal Airport, and the proximity of uniquely high concentrations of birdlife in and along the Great Salt Lake flyway – including gulls. The introduction of putrescible-type waste materials, such as job site food, yard waste and associated debris) into the typical construction-demolition waste stream is commonplace, and deserves specific avoidance measures and excluding language in the specific permit, as a minimum. Also, while other agency “clearance” documents are provided, no evidence of FAA knowledge and support for this proposed use was provided. As FAA compliance is associated with “non-exemptible” criteria under UDEQ rules prior FAA endorsement would be prudent in this case. Also, inconsistent or incomplete references to allowable and proposed and excluded waste types should be clarified. [*WCSI, 2003 – Sections 2.9, 2.10, 6.1.5, 6.2 and Appendix P; UDEQ, Section 302-1(2)(b)(iii)(A-C); Wright, 2003*]

Response: #8 This Class VI landfill may accept construction/demolition waste, yard waste, inert waste, waste tires and materials derived from waste tires and petroleum contaminated soils that meet the requirements of Subsection R315-315-8(3).

Class VI landfills may not accept hazardous waste, construction/demolition waste containing PCB’s, garbage, municipal solid waste, or industrial solid waste. Food wastes and household garbage are wastes that are not allowed in Class VI landfills. The Executive Secretary believes that putrescible wastes include food and garbage wastes that may attract rodents and birds. Yard wastes are not considered putrescible.

The location standard referenced in this comment, R315-302-1(2)(a)(v) does not apply because the wastes disposed are not putrescible. Putrescible waste is a concern because it serves as a bird attractant. The waste allowed at this facility is not expected to attract birds.

A determination from the FAA is not required by the siting criteria of R315-302-1(2)(a)(v). In this case, the applicant has obtained a determination from the FAA indicating that the FAA has no objection to the siting of this landfill.

The reference in the comment to R315-302-1(2)(b)(iii)(A - C) refers to unstable geology, not putrescible wastes.

Comment: #9 Although local and regional soil mapping is provided in the application, the identification of on-site soil conditions and stability is incomplete. Anecdotal information suggests that soil and organic (agricultural waste) material was historically imported to this site, which may not be suitable as stable base material. Further, the use of regional and vicinity soil information is not adequate to address this concern. [WCSI, 2003-Appendix C and I; UDEQ, 2002 Section 302-1(2)(b)(iii)(A-C); Wright, 2003, Ogden, 2003]

Response: #9 The standard referred to in this comment, R315-302-1(2)(b)(iii)(A-C) does not apply to Class VI landfills. R315-305-4(1) cites the location standards that apply to Class VI landfills. R315-302-1(2)(b)(iii) is not one of the location standards that Class VI landfills must meet. Class VI landfills are not required to have liners, consequently, there are no engineering designs that could be compromised in the event of subsidence or differential settling.

Comment: #10 Although the application included basic information regarding the presence of surface and groundwater “rights” in the vicinity of the proposed facility, this information did not address UDEQ rules regarding the location of such facilities within the “designated drinking water source protection areas” or “within a distance to existing drinking water wells.” The application does not address these distance criteria. For the record, at least one well is located approximately 4752 feet southeast of the proposed landfill, at the Ogden City Municipal Airport. [WCSI, 2003-Section 5.5.1 and Appendix J; UDEQ, 2002, Section 302-1(2)(e)(v)(A-C)]

Response: #10 The standard referred to in this comment, R315-302-1(2)(e)(v), does not apply to Class VI landfills.

Comment: #11 I observed the presence of a shallow, underground high-pressure gas line (Questar) crossing the northern portion of the property, during a recent field observation trip to the proposed site. The application did not include any mention of this significant feature, or any other utilities in the area, despite a reference in Appendix G for that purpose. Documentation of Questar’s awareness and requirements for construction near such a utility would be prudent. [WCSI, 2003-Section 4.2 and Appendix G]

Response: #11 The Permittee obtained a map from Questar indicating that this gas line is located on the northern boundary of the property where it is not expected to conflict with the landfill activity proposed for this site.

Comment: #12 The application provides limited information suggesting that no jurisdictional wetlands are present, but does not contain other relevant information upon which the U.S. Army Corps determination was made. The installation of a “groundwater drain” along the subject properties eastern boundary was reported to me. Because the natural soil and hydrologic conditions on the property have reportedly been altered even up to recent time periods – and I could not determine where this information was available to the agent providing the determination – the determination documented in Appendix N may warrant further review. [WCSI, 2003 – Section 61.3 and Appendix N; UDEQ, Section 302-1(2)(d); Wright, 2003; USFWS, 2003]

Response: #12 The U.S Army Corps determined from a site inspection on 7/1/03 that this property does not contain a wetland.

Comment: #13 The identification of cover sources is incomplete. The reviewer could not determine an adequate correlation between availability (volume) or suitability (characteristics) or the proposed “sand and barrow (sic),” and projected cover needs, based on the information provided in the application. Anecdotal information suggests that soil and organic (agricultural wastes) material was historically imported to this site, which may not be suitable for cover material. [WCSI, 2003-Section 6.5.1 and 7.2; Wright, 2003]

Response: #13 There are no requirements addressing soil quality used for periodic or final cover. It is anticipated that soil received as waste could be used as a periodic cover.

The quantity of soil estimated for final cover is included in the Financial Assurance calculations of Section 9 of the application. The information provided in the application adequately addresses the cover requirements.

Comment: #14 The proximity of the final lowest waste cell elevation (4345 feet) to the “historic high level of ground water” elevation is not adequately documented. This elevation should be shown, at a minimum, on the engineering drawings provided in the Appendices, and must indicate least 5 or 10 foot separation, depending upon the final design. The soils and groundwater references cited in Appendix I are not adequate reliance regarding this important, site-specific criteria. Also of concern is anecdotal information suggesting that the depth to groundwater is currently less than five (5) feet below the grade of 33rd South. Piezometric data and historic analysis, obtained from the proposed site, is necessary to

address this separation criteria, at a minimum. [WCSI, 2003-Section 5.3, 6.2 and Appendices F, I, Q and S; UDEQ, 2002, Section 302-1(2)(e)(B)(i)(XXX)]

- Response: #14 Site excavations were performed and the site groundwater elevation has been determined. Section V (F)(4) has been added to the draft permit that requires that the bottom elevation of the landfill cells be at least 4359 feet above mean sea level.
- Comment: #15 The proximity of a railroad crossing, and the traffic load and volume of 33rd South, should be evaluated and discussed in the application and the operation plan relative to traffic safety and design adequacy. Again, prior awareness and support of local government agencies would provide some means to confirm the need for any transportation-related upgrades, in order to accommodate the proposed project.
- Response: #15 Traffic safety and traffic load are outside the legal authority of the Executive Secretary. They are, however, issues for the county zoning authority.

Comments received during public meeting
December 3, 2004
Weber County Council Chambers

- Comments: #16 Several comments were received regarding the proximity of the proposed landfill to the Ogden City Municipal Airport. The objection of these comments to the location of the proposed landfill centered on the safety issues of the airplanes when a landfill that could potentially attract birds. Mr. Rich indicated that the landfill would generate dust and hamper pilot visibility. [Gary Kapp, Jack Vandehyde, Ed Rich, Bryce Gibby]
- Response: #16 See response #1 regarding the location standards of a construction/demolition debris landfill.
- Comments: #17 Several people stated that the proximity of the proposed landfill to their business would decrease the value of the property, create dust, attract rodents, rats, raccoons, skunks, and coyotes.
- Response: #17 The proximity of the landfill to businesses or other property are considered in the zoning of the property. Dust suppression is required of this landfill and is addressed in the Plan of Operation. The attraction of rodents, rats, raccoons, skunks, and coyotes are not anticipated to be a problem at this landfill as no food sources or habitat will be available to these animals.

Comments: #18 Several comments were received stating that the acceptance of construction/demolition debris would include food wastes from construction personnel and yard waste. Since food wastes were considered to be putrescible, and yard waste were capable of being decomposed by microorganisms, the commenter felt that these wastes would attract birds and gulls. The attraction of birds and gulls would consequently provide a risk to airplanes.

Response: #18 As stated in Response #8, construction/demolition debris landfills cannot accept food wastes and household garbage. Based on staff experience inspecting C&D landfills throughout the state, the Executive Secretary does not expect incidental quantities of discarded food in the waste to attract significant numbers of birds that might pose a threat to airplanes. Similarly, yard wastes have not been known to attract birds and are specifically allowed to be disposed in construction/demolition debris landfills.

Comments: #19 Several comments were received stating that this landfill would generate dust in sufficient quantities to impact the visibility of aircraft landing at the airport and would precipitate fog, and would generally degrade the air quality of this area.

Response: #19 Dust control is an integral part of the plan of operations proposed at this facility. Should dust be generated during landfill operations, the landfill is required to water down the haul roads. Fugitive dust management is discussed in the permit application Section 2.7.

Comment: #20 One commenter said the permit application did not include a financial assurance mechanism and the financial assurance needed to be completed before the permit could be issued.

Response: #20 Rule R315-309-1 states that each disposal facility shall establish financial assurance sufficient to assure adequate closure, post-closure care, and corrective action, if required, of the facility by compliance with one or more financial assurance mechanisms acceptable to and approved by the Executive Secretary. The applicant submitted a financial assurance plan in Section 9.0 of the application. The financial assurance mechanism chosen by the applicant is a bond or an escrow account. Both of these mechanisms are acceptable under the rules.

This rule also says that a financial assurance mechanism must be effective before the initial receipt of waste, not when the permit application is submitted.

Comment: #21 A comment was received stating that insufficient public notice was given and that Roy City and Ogden City were not contacted that a landfill was proposed at this location.

Response: #21 A Legal Notice was published in the Salt Lake Tribune, Deseret News and Standard Examiner in accordance with the requirements of our Rules.